

Before the
Federal Communications Commission
Washington, D.C. 20554

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In the Matter of)

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Biennial Regulatory Review -- Amendment of)
Parts 0, 1, 13, 22, 24, 26, 27, 80,)
87, 90, 95, 97 and 101 of the Commission's Rules)
to Facilitate the Development and Use of the)
Universal Licensing System in the Wireless)
Telecommunications Services)

WT Docket No. 98-20

COMMENTS OF PATHNET, INC.

Pathnet, Inc. respectfully submits these Comments on three issues raised in the Notice of Proposed Rulemaking adopted in the above-captioned proceeding. Pathnet commends the Commission for taking these steps to initiate a Universal Licensing System ("ULS") which should expedite the processing of applications and benefit the public interest. Although Pathnet supports this proposal, it believes three issues merit comment. In particular, Pathnet responds to the Commission's request for comment on whether (1) to grant applicants a 30-day period in which to correct or amend minor defects, (2) to amend Commission Rule 101.45 to provide for only comparative consideration for mutually exclusive applications, and (3) to eliminate the requirement that fixed microwave service applicants file certain technical information.

Pathnet is implementing a business plan to become a leading provider of high quality, low cost, long haul telecommunications capacity to second and third tier markets throughout the United States primarily by upgrading existing wireless infrastructure to develop a state-of-the-art, SONET network. Pathnet is positioning itself primarily as a "carrier's carrier" providing high capacity, dedicated network to carriers

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such as interexchange carriers, local exchange carriers, Internet service providers, and mobile services providers. Pathnet plans to deploy its digital network by upgrading, integrating and leveraging existing telecommunications assets, sites and rights of way, including those utilized by private microwave licensees such as railroads, utilities, state and local governments and pipelines. As part of its strategic relationships with such private microwave licensees, Pathnet is assisting the incumbent microwave licensees in relocating to the 6 GHz band, if so requested by an incumbent, and in upgrading their systems to digital. In some instances, Pathnet will lease excess transmission capacity from the incumbent licensees for Pathnet's network. In other instances, Pathnet will obtain fixed point-to-point microwave licenses, but will utilize the incumbent licensees existing rights of way, sites and facilities in building its network. Filing applications under the Commission's rules, and having certainty in the processing and granting of these applications, is crucial to Pathnet's business plan. Pathnet, therefore, has an interest in this proceeding.

A. 30-day Grace Period To Correct Applications

Currently, the Commission's rules regarding whether an application is dismissed or returned due to incorrect or missing information vary from service to service. The Commission has proposed amending its rules so that all Wireless Telecommunications Bureau ("WTB") applicants will be subject to the same procedures for defective or incomplete applications, regardless of whether the applicant filed electronically or manually. Further, the Commission has proposed granting all WTB

applicants 30 days from notification of a defect in an application to correct or amend the application.^{1/}

Granting all WTB applicants a 30-day period in which to correct or amend a defective application not only promotes comity and efficiency, but -- for point-to-point microwave applicants -- is critical under the Commission's licensing system. The Commission is well aware of the delay in processing point-to-point microwave applications. In an effort to minimize the hardship caused to applicants by lengthy processing delays, the Commission adopted a conditional licensing procedure. Under this procedure, point-to-point microwave applicants can construct and operate under a conditional license upon filing FCC Form 415 and certifying that it meets the conditional licensing eligibility requirements. However, under the Commission's rules, the conditional license automatically expires if the underlying FCC Form 415 is dismissed. See Section 101.31(e)(2) of the Commission's rules, 47 C.F.R. § 101.31(e)(2). Moreover, the underlying FCC Form 415 may be dismissed for relatively minor defects, such as listing incorrect coordinates for a tower.

Thus, under the current licensing procedures, a fixed microwave applicant is placed in an untenable position. The applicant must either wait a minimum of six to nine months for its applications to be granted prior to commencing service, or it may operate under a conditional license, but could be required to cease operations at a

^{1/} Biennial Regulatory Review -- Amendment of Parts 0, 1, 13, 22, 24, 26, 27, 80, 87, 90, 95, 97 and 101 of the Commission's Rules to Facilitate the Development and Use of the Universal Licensing System in the Wireless Telecommunications Services, WT Docket No. 98-20, Notice of Proposed Rulemaking, FCC 98-25 (March 18, 1998) ("Notice") at ¶ 51-54.

moment's notice if its application contains even a minor error. For Pathnet, shutting down its microwave system after selling capacity to other carriers could devastate its business. On the other hand, waiting six to nine months for its applications to be granted before it begins generating revenues is not a feasible alternative.

The Commission's proposal to grant WTB applicants 30 days to correct errors in their applications solves this licensing dilemma. Instead of a fixed microwave application being dismissed (and the conditional license revoked) for a minor error, the application will remain pending (and the conditional license valid) while the applicant corrects the error. This will provide fixed microwave applicants greater certainty regarding their conditional licenses, which ultimately will mean better services for the public.

B. Amendment of Commission Rule 101.45

Pathnet fully supports the Commission's proposed amendment to Section 101.45 of the Commission's rules to remove random selection as a method for deciding between conflicting common carrier microwave applications. See Notice, Appendix N-7. The Commission's past experiences have clearly demonstrated that random selection encourages speculative applications. As a result, a license may end up in the hands of an applicant whose only goal is to profit through the sale of the license rather than serving the public. Using only comparative consideration procedures to decide between conflicting microwave applications will ensure that the license is awarded to an applicant truly interested in providing high quality communications services to the public.

C. Fixed Microwave Data Requirements

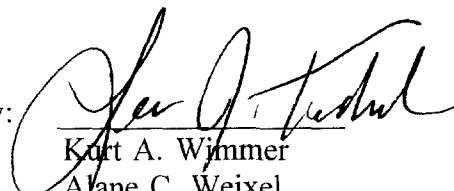
Pathnet supports the Commission's proposal to eliminate the requirement that applicants for fixed microwave services file technical information regarding type acceptance number, line loss, channel capacity and baseband signal type. See Notice, para. 84. As the Commission correctly noted, this information is no longer necessary as applicants are primarily responsible for interference coordination.

* * *

Through this rulemaking proceeding, the Commission has embarked on a commendable task to implement a Universal Licensing System and to eliminate duplicative, outmoded or otherwise unnecessary regulations. Each of the proposals discussed above will further the Commission's goal of streamlining its wireless licensing rules. Granting applicants a 30-day period in which to correct omissions or defects in applications will provide an additional benefit of allowing fixed microwave applicants to utilize fully the Commission's conditional licensing procedures.

Respectfully submitted,
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May 22, 1998